

108TH CONGRESS
1ST SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. ENZI introduced the following bill; which was read twice and referred to
the Committee on _____

A BILL

To amend the Occupational Safety and Health Act of 1970
to further improve the safety and health of working
environments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Safety Advancement for Employees Act of 2004” or the
6 “SAFE Act”.

7 (b) REFERENCE.—Whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment
9 to, or repeal of, a section or other provision, the reference
10 shall be considered to be made to a section or other provi-

1 sion of the Occupational Safety and Health Act of 1970
2 (29 U.S.C. 651 et seq.).

3 **SEC. 2. PURPOSE.**

4 Section 2(b) of the Act (29 U.S.C. 651(b)) is
5 amended—

6 (1) in paragraph (13), by striking the period
7 and inserting “; and”; and

8 (2) by adding at the end the following:

9 “(14) by increasing the joint cooperation of em-
10 ployers, employees, and the Secretary of Labor in
11 the effort to ensure safe and healthful working con-
12 ditions for employees.”.

13 **SEC. 3. THIRD PARTY CONSULTATION SERVICES PROGRAM.**

14 (a) PROGRAM.—The Act (29 U.S.C. 651 et seq.) is
15 amended by inserting after section 8 the following:

16 **“SEC. 8A. THIRD PARTY CONSULTATION SERVICES PRO-**
17 **GRAM.**

18 “(a) PURPOSE.—It is the purpose of this section to
19 encourage employers to conduct voluntary safety and
20 health audits using the expertise of qualified safety and
21 health consultants and to proactively seek individualized
22 solutions to workplace safety and health concerns.

23 “(b) ESTABLISHMENT OF PROGRAM.—

24 “(1) IN GENERAL.—Not later than 18 months
25 after the date of enactment of this section, the Sec-

1 retary, in consultation with the advisory committee
2 established under section 7(d), shall establish and
3 implement, by regulation, a program that qualifies
4 individuals to provide consultation services to em-
5 ployers to assist employers in the identification and
6 correction of safety and health hazards in the work-
7 places of employers.

8 “(2) ELIGIBILITY.—The following individuals
9 shall be eligible to be qualified under the program
10 under paragraph (1) as certified safety and health
11 consultants:

12 “(A) An individual who is licensed by a
13 State authority as a physician, industrial hy-
14 gienist, professional engineer, safety engineer,
15 safety professional, or registered nurse.

16 “(B) An individual who has been employed
17 as an inspector for a State plan State or as a
18 Federal occupational safety and health inspec-
19 tor for not less than a 5-year period.

20 “(C) An individual who is qualified in an
21 occupational health or safety field by an organi-
22 zation whose program has been accredited by a
23 nationally recognized private accreditation orga-
24 nization or by the Secretary.

1 “(D) An individual who has not less than
2 10 years expertise in workplace safety and
3 health.

4 “(E) Other individuals determined to be
5 qualified by the Secretary.

6 “(3) GEOGRAPHICAL SCOPE OF CONSULTATION
7 SERVICES.—A consultant qualified under the pro-
8 gram under paragraph (1) may provide consultation
9 services in any State.

10 “(4) LIMITATION BASED ON EXPERTISE.—A
11 consultant qualified under the program under para-
12 graph (1) may only provide consultation services to
13 an employer with respect to a worksite if the work
14 performed at that worksite coincides with the par-
15 ticular expertise of the individual.

16 “(c) SAFETY AND HEALTH REGISTRY.—The Sec-
17 retary shall develop and maintain a registry that includes
18 all consultants that are qualified under the program under
19 subsection (b)(1) to provide the consultation services de-
20 scribed in subsection (b) and shall publish and make such
21 registry readily available to the general public.

22 “(d) DISCIPLINARY ACTIONS.—The Secretary may
23 revoke the status of a consultant qualified under sub-
24 section (b), or the participation of an employer under sub-

1 section (b) in the third party consultation program, if the
2 Secretary determines that the consultant or employer—

3 “(1) has failed to meet the requirements of the
4 program; or

5 “(2) has committed malfeasance, gross neg-
6 ligence, collusion or fraud in connection with any
7 consultation services provided by the qualified con-
8 sultant.

9 “(e) PROGRAM REQUIREMENTS.—

10 “(1) FULL SERVICE CONSULTATION.—The con-
11 sultation services described in subsection (b), and
12 provided by a consultant qualified under the pro-
13 gram under subsection (b)(1), shall include an eval-
14 uation of the workplace of an employer to determine
15 if the employer is in compliance with the require-
16 ments of this Act, including any regulations promul-
17 gated pursuant to this Act. Employers electing to
18 participate in such program shall contract with a
19 consultant qualified under subsection (b)(2) to per-
20 form a full service visit and consultation covering
21 the employer’s establishment, including a complete
22 safety and health program review. Following the
23 guidance as specified in this section, the consultant
24 shall discuss with the employer the elements of an
25 effective program.

1 “(2) CONSULTATION REPORT.—

2 “(A) IN GENERAL.—After a consultant
3 conducts a comprehensive survey of an em-
4 ployer under a program under this section, the
5 consultant shall prepare and submit to the em-
6 ployer a written report that includes an action
7 plan identifying any violations of this Act, and
8 any appropriate corrective measures to address
9 the violations that are identified using an effec-
10 tive safety and health program.

11 “(B) ELEMENTS.—A consultation report
12 shall contain each of the following elements.

13 “(i) ACTION PLAN.—

14 “(I) IN GENERAL.—An action
15 plan under subparagraph (A) shall be
16 developed in consultation with the em-
17 ployer as part of the initial com-
18 prehensive survey. The consultant and
19 the employer shall jointly use the on-
20 site time in the initial visit to the em-
21 ployer’s place of business to agree on
22 the terms of the action plan and the
23 time frames for achieving specific
24 items.

1 “(II) REQUIREMENTS.—The ac-
2 tion plan shall outline the specific
3 steps that must be accomplished by
4 the employer prior to receiving a cer-
5 tificate of compliance. The action plan
6 shall address in detail—

7 “(aa) the employer’s correc-
8 tion of all identified safety and
9 health hazards, with applicable
10 time frames;

11 “(bb) the steps necessary for
12 the employer to implement an ef-
13 fective safety and health pro-
14 gram, with applicable time
15 frames; and

16 “(cc) a statement of the em-
17 ployer’s commitment to work
18 with the consultation project to
19 achieve a certificate of compli-
20 ance.

21 “(ii) SAFETY AND HEALTH PRO-
22 GRAM.—An employer electing to partici-
23 pate in a program under this section shall
24 establish a safety and health program to
25 manage workplace safety and health to re-

1 duce injuries, illnesses and fatalities that
2 complies with paragraph (3). Such safety
3 and health program shall be appropriate to
4 the conditions of the workplace involved.

5 “(3) REQUIREMENTS FOR SAFETY AND HEALTH
6 PROGRAM.—

“(A) WRITTEN PROGRAM.—An employer electing to participate shall maintain a written safety and health program that contains policies, procedures, and practices to recognize and protect their employees from occupational safety and health hazards. Such procedures shall include provisions for the identification, evaluation and prevention or control of workplace hazards.

“(B) MAJOR ELEMENTS.—A safety and health program shall include the following elements, and may include other elements as necessary to the specific worksite involved and as determined appropriate by the qualified consultant and employer:

22 “(i) EMPLOYER COMMITMENT AND
23 EMPLOYEE INVOLVEMENT.—

24 “(I) IN GENERAL.—The existence
25 of both management leadership and

1 employee participation must be dem-
2 onstrated in accordance with sub-
3 clauses (II) and (III).

4 “(II) MANAGEMENT LEADER-
5 SHIP.—To make a demonstration of
6 management leadership under this
7 subclause, the employer shall—

8 “(aa) set a clear worksite
9 safety and health policy that em-
10 ployees can fully understand;

11 “(bb) set and communicate
12 clear goals and objectives with
13 the involvement of employees;

14 “(cc) provide essential safety
15 and health leadership in tangible
16 and recognizable ways;

17 “(dd) set positive safety and
18 health examples; and

19 “(ee) perform comprehensive
20 reviews of safety and health pro-
21 grams for quality assurance
22 using a process which promotes
23 continuous correction.

24 “(III) EMPLOYEE PARTICIPA-
25 TION.—With respect to employee par-

1 participation, the employer shall dem-
2 onstrate a commitment to working to
3 develop a comprehensive, written and
4 operational safety and health program
5 that involves employees in significant
6 ways that affect safety and health. In
7 making such a demonstration, the em-
8 ployer shall—

9 “(aa) provide for employee
10 participation in actively identi-
11 fying and resolving safety and
12 health issues in tangible ways
13 that employees can clearly under-
14 stand;

15 “(bb) assign safety and
16 health responsibilities in such a
17 way that employees can under-
18 stand clearly what is expected of
19 them;

20 “(cc) provide employees with
21 the necessary authority and re-
22 sources to meet their safety and
23 health responsibilities; and

24 “(dd) provide that safety
25 and health performance for man-

1 agers, supervisors and employees
2 be measured in tangible ways.

3 “(ii) WORKPLACE ANALYSIS.—The
4 employer, in consultation with the consult-
5 ant, shall systematically identify and assess
6 hazards in the following ways:

7 “(I) Conduct corrective action
8 and regular expert surveys to update
9 hazard inventories.

10 “(II) Have competent personnel
11 review every planned or new facility,
12 process material, or equipment.

13 “(III) Train all employees and
14 supervisors, conduct routine joint in-
15 spections, and correct items identified.

16 “(IV) Establish a way for em-
17 ployees to report hazards and provide
18 prompt responses to such reports.

19 “(V) Investigate worksite acci-
20 dents and near accidents.

21 “(VI) Provide employees with the
22 necessary information regarding inci-
23 dent trends, causes and means of pre-
24 vention.

1 “(iii) HAZARD PREVENTION.—The
2 employer, in consultation with the consult-
3 ant, shall—

4 “(I) engage in timely hazard con-
5 trol, working to ensure that hazard
6 controls are fully in place and commu-
7 nicated to employees, with emphasis
8 on engineering controls and enforcing
9 safe work procedures;

10 “(II) maintain equipment using
11 operators who are trained to recognize
12 maintenance needs and perform or di-
13 rect timely maintenance;

14 “(III) provide training on emer-
15 gency planning and preparation,
16 working to ensure that all personnel
17 know immediately how to respond as
18 a result of effective planning, training,
19 and drills;

20 “(IV) equip facilities for emer-
21 gencies with all systems and equip-
22 ment in place and regularly tested so
23 that all employees know how to com-
24 municate during emergencies and how
25 to use equipment; and

1 “(V) provide for emergency med-
2 ical situations using employees who
3 are fully trained in emergency medi-
4 cine.

5 “(iv) SAFETY AND HEALTH TRAIN-
6 ING.—The employer, in consultation with
7 the consultant, shall—

8 “(I) involve employees in hazard
9 assessment, development and delivery
10 of training;

11 “(II) actively involve supervisors
12 in worksite analysis by empowering
13 them to ensure physical protections,
14 reinforce training, enforce discipline,
15 and explain work procedures; and

16 “(III) provide training in safety
17 and health management to managers.

18 “(4) REINSPECTION.—At a time agreed to by
19 the employer and the consultant, the consultant may
20 reinspect the workplace of the employer to verify
21 that the required elements in the consultation report
22 have been satisfied. If such requirements have been
23 satisfied, the employer shall be provided with a cer-
24 tificate of compliance for that workplace by the
25 qualified consultant.

1 “(f) EXEMPTION FROM CIVIL PENALTIES FOR COM-
2 PLIANCE.—

3 “(1) IN GENERAL.—If an employer enters into
4 a contract with an individual qualified under the
5 program under this section, to provide consultation
6 services described in subsection (b), and receives a
7 certificate of compliance under subsection (e)(4), the
8 employer shall be exempt from the assessment of
9 any civil penalty under section 17 for a period of 1
10 year after the date on which the employer receives
11 such certificate.

12 “(2) EXCEPTIONS.—An employer shall not be
13 exempt under paragraph (1)—

14 “(A) if the employer has not made a good
15 faith effort to remain in compliance as required
16 under the certificate of compliance; or

17 “(B) to the extent that there has been a
18 fundamental change in the hazards of the work-
19 place.

20 “(g) RIGHT TO INSPECT.—Nothing in this section
21 shall be construed to affect the rights of the Secretary to
22 inspect and investigate worksites covered by a certificate
23 of compliance.

24 “(h) RENEWAL REQUIREMENTS.—An employer that
25 is granted a certificate of compliance under this section

1 may receive a 1 year renewal of the certificate if the fol-
2 lowing elements are satisfied:

3 “(1) A qualified consultant shall conduct a com-
4 plete onsite safety and health survey to ensure that
5 the safety and health program has been effectively
6 maintained or improved, workplace hazards are
7 under control, and elements of the safety and health
8 program are operating effectively.

9 “(2) The consultant, in an onsite visit by the
10 consultant, has determined that the program re-
11 quirements have been complied with and the health
12 and safety program has been operating effectively.

13 “(i) NON-FIXED WORKSITES.—With respect to em-
14 ployer worksites that do not have a fixed location, a certifi-
15 cate of compliance shall only apply to that worksite which
16 satisfies the criteria under this section and such certificate
17 shall not be portable to any other worksite. This section
18 shall not apply to service establishments that utilize essen-
19 tially the same work equipment at each non-fixed work-
20 site.”.

21 **SEC. 4. ESTABLISHMENT OF SPECIAL ADVISORY COM-**
22 **MITTEE.**

23 Section 7 of the Act (29 U.S.C. 656) is amended by
24 adding at the end the following:

1 “(d)(1) Not later than 6 months after the date of
2 enactment of this subsection, the Secretary shall establish
3 an advisory committee (pursuant to the Federal Advisory
4 Committee Act (5 U.S.C. App.)) to carry out the duties
5 described in paragraph (3).

6 “(2) The advisory committee shall be composed of—

7 “(A) 3 members who are employees;

8 “(B) 3 members who are employers;

9 “(C) 2 members who are members of the gen-
10 eral public; and

11 “(D) 1 member who is a State official from a
12 State plan State.

13 Each member of the advisory committee shall have exper-
14 tise in workplace safety and health as demonstrated by
15 the educational background of the member.

16 “(3) The advisory committee shall advise and make
17 recommendations to the Secretary with respect to the es-
18 tablishment and implementation of a consultation services
19 program under section 8A.”.

20 **SEC. 5. CONTINUING EDUCATION AND PROFESSIONAL CER-**
21 **TIFICATION FOR CERTAIN OCCUPATIONAL**
22 **SAFETY AND HEALTH ADMINISTRATION PER-**
23 **SONNEL.**

24 Section 8 of the Act (29 U.S.C. 657) is amended by
25 adding at the end the following:

1 “(i) Any Federal employee responsible for enforcing
2 this Act shall, not later than 2 years after the date of
3 enactment of this subsection or 2 years after the initial
4 employment of the employee involved, meet the eligibility
5 requirements prescribed under subsection (b)(2) of section
6 8A.

7 “(j) The Secretary shall ensure that any Federal em-
8 ployee responsible for enforcing this Act who carries out
9 inspections or investigations under this section, receive
10 professional education and training at least every 5 years
11 as prescribed by the Secretary.”.

12 **SEC. 6. EXPANDED INSPECTION METHODS.**

13 (a) PURPOSE.—It is the purpose of this section to
14 empower the Secretary of Labor to achieve increased em-
15 ployer compliance by using, at the Secretary’s discretion,
16 more efficient and effective means for conducting inspec-
17 tions.

18 (b) GENERAL.—Section 8(f) of the Act (29 U.S.C.
19 657(f) is amended—

20 (1) by adding at the end the following:

21 “(3) The Secretary or an authorized representative
22 of the Secretary may, as a method of investigating an al-
23 leged violation or danger under this subsection, attempt,
24 if feasible, to contact an employer by telephone, facsimile,
25 or other appropriate methods to determine whether—

1 “(A) the employer has taken corrective actions
2 with respect to the alleged violation or danger; or

3 “(B) there are reasonable grounds to believe
4 that a hazard exists.

5 “(4) The Secretary is not required to conduct an in-
6 spection under this subsection if the Secretary determines
7 that a request for an inspection was made for reasons
8 other than the safety and health of the employees of an
9 employer or that the employees of an employer are not
10 at risk.”.

11 **SEC. 7. WORKSITE-SPECIFIC COMPLIANCE METHODS.**

12 Section 9 of the Act (29 U.S.C. 658) is amended by
13 adding at the end the following:

14 “(d) A citation issued under subsection (a) to an em-
15 ployer who violates section 5, any standard, rule, or order
16 promulgated pursuant to section 6, or any other regulation
17 promulgated under this Act shall be vacated if such em-
18 ployer demonstrates that the employees of such employer
19 were protected by alternative methods that are equally or
20 more protective of the safety and health of the employees
21 than the methods required by such standard, rule, order,
22 or regulation in the factual circumstances underlying the
23 citation.

1 “(e) Subsection (d) shall not be construed to elimi-
2 nate or modify other defenses that may exist to any cita-
3 tion.”.

4 **SEC. 8. TECHNICAL ASSISTANCE PROGRAM.**

5 (a) IN GENERAL.—Section 21(c) of the Act (29
6 U.S.C. 670(c)) is amended—

7 (1) by striking “(c) The” and inserting “(c)(1)
8 The”;

9 (2) by striking “(1) provide” and inserting “(A)
10 provide”;

11 (3) by striking “(2) consult” and inserting “(B)
12 consult”; and

13 (4) by adding at the end the following:

14 “(2)(A) The Secretary shall, through the authority
15 granted under section 7(c) and paragraph (1), enter into
16 cooperative agreements with States for the provision of
17 consultation services by such States to employers con-
18 cerning the provision of safe and healthful working condi-
19 tions.

20 “(B)(i) Except as provided in clause (ii), the Sec-
21 retary shall reimburse a State that enters into a coopera-
22 tive agreement under subparagraph (A) in an amount that
23 equals 90 percent of the costs incurred by the State for
24 the provision of consultation services under such agree-
25 ment.

1 “(ii) A State shall be reimbursed by the Secretary
2 for 90 percent of the costs incurred by the State for the
3 provision of—

4 “(I) training approved by the Secretary for
5 State personnel operating under a cooperative agree-
6 ment; and

7 “(II) specified out-of-State travel expenses in-
8 curred by such personnel.

9 “(iii) A reimbursement paid to a State under this
10 subparagraph shall be limited to costs incurred by such
11 State for the provision of consultation services under this
12 paragraph and the costs described in clause (ii).”.

13 (b) PILOT PROGRAM.—Section 21 of the Act (29
14 U.S.C. 670) is amended by adding at the end the fol-
15 lowing:

16 “(e)(1) Not later than 90 days after the date of en-
17 actment of this subsection, the Secretary shall establish
18 and carry out a pilot program in 3 States to provide expe-
19 dited consultation services, with respect to the provision
20 of safe and healthful working conditions, to employers that
21 are small businesses (as the term is defined by the Admin-
22 istrator of the Small Business Administration). The Sec-
23 retary shall carry out the program for a period of not to
24 exceed 2 years.

1 “(2) The Secretary shall provide consultation services
2 under paragraph (1) not later than 4 weeks after the date
3 on which the Secretary receives a request from an em-
4 ployer.

5 “(3) The Secretary may impose a nominal fee to an
6 employer requesting consultation services under para-
7 graph (1). The fee shall be in an amount determined by
8 the Secretary. Employers paying a fee shall receive pri-
9 ority consultation services by the Secretary.

10 “(4) In lieu of issuing a citation under section 9 to
11 an employer for a violation found by the Secretary during
12 a consultation under paragraph (1), the Secretary shall
13 permit the employer to carry out corrective measures to
14 correct the conditions causing the violation. The Secretary
15 shall conduct not more than 2 visits to the workplace of
16 the employer to determine if the employer has carried out
17 the corrective measures. The Secretary shall issue a cita-
18 tion as prescribed under section 5 if, after such visits, the
19 employer has failed to carry out the corrective measures.

20 “(5) Not later than 90 days after the termination of
21 the program under paragraph (1), the Secretary shall pre-
22 pare and submit a report to the appropriate committees
23 of Congress that contains an evaluation of the implemen-
24 tation of the pilot program.”.

1 **SEC. 9. VOLUNTARY PROTECTION PROGRAMS.**

2 (a) COOPERATIVE AGREEMENTS.—The Secretary of
3 Labor shall establish cooperative agreements with employ-
4 ers to encourage the establishment of comprehensive safe-
5 ty and health management systems that include—

6 (1) requirements for systematic assessment of
7 hazards;

8 (2) comprehensive hazard prevention, mitiga-
9 tion, and control programs;

10 (3) active and meaningful management and em-
11 ployee participation in the voluntary program de-
12 scribed in subsection (b); and

13 (4) employee safety and health training.

14 (b) VOLUNTARY PROTECTION PROGRAM.—

15 (1) IN GENERAL.—The Secretary of Labor shall
16 establish and carry out a voluntary protection pro-
17 gram (consistent with subsection (a)) to encourage
18 excellence and recognize the achievement of excel-
19 lence in both the technical and managerial protec-
20 tion of employees from occupational hazards.

21 (2) PROGRAM REQUIREMENT.—The voluntary
22 protection program shall include the following:

23 (A) APPLICATION.—Employers who volun-
24 teer under the program shall be required to
25 submit an application to the Secretary of Labor
26 demonstrating that the worksite with respect to

1 which the application is made meets such re-
2 quirements as the Secretary of Labor may re-
3 quire for participation in the program.

4 (B) ONSITE EVALUATIONS.—There shall
5 be onsite evaluations by representatives of the
6 Secretary of Labor to ensure a high level of
7 protection of employees. The onsite visits shall
8 not result in enforcement of citations under the
9 Occupational Safety and Health Act of 1970
10 (29 U.S.C. 651 et seq.).

11 (C) INFORMATION.—Employers who are
12 approved by the Secretary of Labor for partici-
13 pation in the program shall assure the Sec-
14 retary of Labor that information about the
15 safety and health program of the employers
16 shall be made readily available to the Secretary
17 of Labor to share with employees.

18 (D) REEVALUATIONS.—Periodic reevalua-
19 tions by the Secretary of Labor of the employ-
20 ers shall be required for continued participation
21 in the program.

22 (3) EXEMPTIONS.—A site with respect to which
23 a program has been approved shall, during partici-
24 pation in the program be exempt from inspections or
25 investigations and certain paperwork requirements

1 to be determined by the Secretary of Labor, except
2 that this paragraph shall not apply to inspections or
3 investigations arising from employee complaints, fa-
4 talities, catastrophes, or significant toxic releases.

5 (4) INCREASED SMALL BUSINESS PARTICIPA-
6 TION.—The Secretary of Labor shall establish and
7 implement, by regulation, a program to increase par-
8 ticipation by small businesses (as the term is defined
9 by the Administrator of the Small Business Admin-
10 istration) in the voluntary protection program
11 through outreach and assistance initiatives and de-
12 veloping program requirements that address the
13 needs of small businesses.

14 **SEC. 10. PREVENTION OF ALCOHOL AND SUBSTANCE**
15 **ABUSE.**

16 The Act (29 U.S.C. 651 et seq.) is amended by add-
17 ing at the end the following:

18 **“SEC. 34. ALCOHOL AND SUBSTANCE ABUSE TESTING.**

19 “(a) PROGRAM PURPOSE.—In order to secure a safe
20 workplace, employers may establish and carry out an alco-
21 hol and substance abuse testing program in accordance
22 with subsection (b).

23 “(b) FEDERAL GUIDELINES.—

1 “(1) REQUIREMENTS.—An alcohol and sub-
2 stance abuse testing program described in subsection
3 (a) shall meet the following requirements:

4 “(A) SUBSTANCE ABUSE.—A substance
5 abuse testing program shall permit the use of
6 an onsite or offsite testing.

7 “(B) ALCOHOL.—The alcohol testing com-
8 ponent of the program shall take the form of al-
9 cohol breath analysis and shall conform to any
10 guidelines developed by the Secretary of Trans-
11 portation for alcohol testing of mass transit em-
12 ployees under the Department of Transpor-
13 tation and Related Agencies Appropriations
14 Act, 1992.

15 “(2) DEFINITION.—For purposes of this section
16 the term ‘alcohol and substance abuse testing pro-
17 gram’ means any program under which test proce-
18 dures are used to take an analyze blood, breath,
19 hair, urine, saliva, or other body fluids or materials
20 for the purpose of detecting the presence or absence
21 of alcohol or a drug or its metabolites. In the case
22 of urine testing, the confirmation tests must be per-
23 formed in accordance with the mandatory guidelines
24 for Federal workplace testing programs published by
25 the Secretary of Health and Human Services on

1 April 11, 1988, at section 11979 of title 53, Code
2 of Federal Regulations (including any amendments
3 to such guidelines). Proper laboratory protocols and
4 procedures shall be used to assure accuracy and fair-
5 ness and laboratories must be subject to the require-
6 ments of subpart B of the mandatory guidelines,
7 State certification, the Clinical Laboratory Improve-
8 ments Act of the College of American Pathologists.

9 “(c) TEST REQUIREMENTS.—This section shall not
10 be construed to prohibit an employer from requiring—

11 “(1) an applicant for employment to submit to
12 and pass an alcohol or substance abuse test before
13 employment by the employer; or

14 “(2) an employee, including managerial per-
15 sonnel, to submit to and pass an alcohol or sub-
16 stance abuse test—

17 “(A) on a for-cause basis or where the em-
18 ployer has reasonable suspicion to believe that
19 such employee is using or is under the influence
20 of alcohol or a controlled substance;

21 “(B) where such test is administered as
22 part of a scheduled medical examination;

23 “(C) in the case of an accident or incident,
24 involving the actual or potential loss of human
25 life, bodily injury, or property damage;

1 “(D) during the participation of an em-
2 ployee in an alcohol or substance abuse treat-
3 ment program, and for a reasonable period of
4 time (not to exceed 5 years) after the conclu-
5 sion of such program; or

6 “(E) on a random selection basis in work
7 units, locations, or facilities.

8 “(d) CONSTRUCTION.—Nothing in this section shall
9 be construed to require an employer to establish an alcohol
10 and substance abuse testing program for applicants or em-
11 ployees or make employment decisions based on such test
12 results.

13 “(e) PREEMPTION.—The provisions of this section
14 shall not preempt any provision of State law to the extent
15 that such State law is inconsistent with this section.

16 “(f) INVESTIGATIONS.—The Secretary is authorized
17 to conduct testing of employees (including managerial per-
18 sonnel) of an employer for use of alcohol or controlled sub-
19 stances during any investigations of a work-related fatality
20 or serious injury.”.

21 **SEC. 11. DISCRETIONARY COMPLIANCE ASSISTANCE.**

22 Subsection (a) of section 9 of the Act (29 U.S.C.
23 658(a)) is amended to read as follows:

24 “(a)(1) Nothing in this Act shall be construed as pro-
25 hibiting the Secretary or the authorized representative of

1 the Secretary from providing technical or compliance as-
2 sistance to an employer in correcting a violation discovered
3 during an inspection or investigation under this Act with-
4 out issuing a citation.

5 “(2) Except as provided in paragraph (3), if, upon
6 an inspection or investigation, the Secretary or an author-
7 ized representative of the Secretary believes that an em-
8 ployer has violated a requirement of section 5, of any regu-
9 lation, rule, or order promulgated pursuant to section 6,
10 or of any regulations prescribed pursuant to this Act, the
11 Secretary may with reasonable promptness issue a citation
12 to the employer. Each citation shall be in writing and shall
13 describe with particularity the nature of a violation, in-
14 cluding a reference to the provision of the Act, regulation,
15 rule, or order alleged to have been violated. The citation
16 shall fix a reasonable time for the abatement of the viola-
17 tion.

18 “(3) The Secretary or the authorized representative
19 of the Secretary—

20 “(A) may issue a warning in lieu of a citation
21 with respect to a violation that has no significant re-
22 lationship to employee safety or health; and

23 “(B) may issue a warning in lieu of a citation
24 in cases in which an employer in good faith acts

1 promptly to abate a violation if the violation is not
2 a willful or repeated violation.”.

3 **SEC. 12. HAZARD COMMUNICATION.**

4 (a) MODEL MATERIAL SAFETY DATA SHEETS.—

5 (1) PURPOSE.—It is the purpose of this section
6 to assist chemical manufactures and importers in
7 preparing material safety data sheets pursuant to
8 the requirements of the Hazard Communication
9 standard published at section 1910.1200 of title 29,
10 Code of Federal Regulations, and to improve the ac-
11 curacy, consistency, and comprehensibility of such
12 material safety data sheets.

13 (2) MODEL MATERIAL SAFETY DATA SHEETS
14 FOR HIGHLY HAZARDOUS CHEMICALS.—The Sec-
15 retary of Labor shall develop model material safety
16 data sheets for the list of highly hazardous chemi-
17 cals contained in Appendix A to the Process Safety
18 Management of Highly Hazardous Chemicals stand-
19 ard published at section 1910.119 of title 29, Code
20 of Federal Regulations. Such model material safety
21 data sheets shall—

22 (A) comply with the requirements of the
23 Hazard Communication standard published at
24 section 1910.100 of such title 29;

1 (B) be presented in a consistent format
2 that enhances the reliability and comprehen-
3 sibility of information about chemical hazards
4 in the workplace and protective measures; and

5 (C) be made available to the public, includ-
6 ing through posting on the Occupational Safety
7 and Health Administration's website, within 18
8 months after the date of enactment of this Act.

9 (3) CONSTRUCTION.—Nothing in this sub-
10 section shall be construed to—

11 (A) modify or amend the Hazard Commu-
12 nication standard published at section
13 1910.1200 of title 29, Code of Federal Regula-
14 tions, the Process Safety Management of High-
15 ly Hazardous Chemicals standard published at
16 section 1910.119 of such title 29, or any other
17 provision of law; and

18 (B) authorize the Secretary of Labor to in-
19 clude in the model material safety data sheet
20 developed under this subsection any suggestion
21 or recommendation as to permissible or appro-
22 priate workplace exposure levels for these
23 chemicals.

24 (4) AUTHORIZATION OF APPROPRIATIONS.—
25 There are authorized to be appropriated to the De-

1 partment of Labor such sums as may be necessary
2 to carry out this subsection.

3 (b) GLOBALLY HARMONIZED SYSTEM COMMIS-
4 SION.—

5 (1) ESTABLISHMENT.—Not later than 6
6 months after the date of enactment of this Act,
7 there shall be established a commission, to be known
8 as the Global Harmonization Commission (referred
9 to in this subsection as the “Commission”), to con-
10 sider the implementation of the United Nations
11 Globally Harmonized System of Classification and
12 Labeling of Chemicals to improve chemical hazard
13 communication and to make recommendations to
14 Congress.

15 (2) MEMBERSHIP.—The Commission shall be
16 composed of 13 members of whom—

17 (A) 1 shall be the Secretary of Labor;

18 (B) 1 shall be the Secretary of Transpor-
19 tation;

20 (C) 1 shall be the Secretary of Health and
21 Human Services;

22 (D) 1 shall be the Administrator of the
23 Environmental Protection Agency;

24 (E) 1 shall be the Chairman of the Con-
25 sumer Product Safety Commission; and

1 (F) 8 shall be appointed by the Secretary
2 of Labor, of whom—

3 (i) 2 shall be representatives of manu-
4 facturers of hazardous chemicals, including
5 a representative of small businesses;

6 (ii) 2 shall be representatives of em-
7 ployers who are extensive users of haz-
8 ardous chemicals supplied by others, in-
9 cluding a representative of small busi-
10 nesses;

11 (iii) 2 shall be representatives of labor
12 organizations; and

13 (iv) 2 shall be occupational safety and
14 health professionals with expertise in
15 chemical hazard communications.

16 (3) CHAIR AND VICE-CHAIR.—The members of
17 the Commission shall select a chair and vice-chair
18 from among its members.

19 (4) DUTIES.—

20 (A) STUDY AND RECOMMENDATIONS.—

21 The Commission shall conduct a thorough study
22 of, and shall develop recommendations on, the
23 following issues relating to the global harmoni-
24 zation of hazardous chemical communication:

1 (i) Whether the United States should
2 adopt any or all of the elements of the
3 United Nation's Globally Harmonized Sys-
4 tem of Classification and Labeling of
5 Chemicals (referred to in this subsection
6 and the "Globally Harmonized System").

7 (ii) How the Globally Harmonized
8 System should be implemented by the Fed-
9 eral agencies with relevant jurisdiction,
10 taking into consideration the role of the
11 States acting under delegated authority.

12 (iii) How the Globally Harmonized
13 System compares to existing chemical haz-
14 ard communication laws and regulations,
15 including the Hazard Communication
16 standard published at section 1910.1200 of
17 title 29, Code of Federal Regulations.

18 (iv) A consideration of the impact of
19 adopting the Globally Harmonized System
20 on the consistency, effectiveness, com-
21 prehensiveness, timing, accuracy, and com-
22 prehensibility of chemical hazard commu-
23 nication in the United States.

24 (v) A consideration of the impact of
25 adopting the Globally Harmonized System

1 on occupational safety and health in the
2 United States.

3 (vi) A consideration of the impact of
4 adopting the Globally Harmonized System
5 on tort, insurance, and workers compensa-
6 tion laws in the United States.

7 (vii) A consideration of the impact of
8 adopting the Globally Harmonized System
9 on the ability to bring new products to the
10 market in the United States.

11 (viii) A consideration of the cost and
12 benefits of adopting the Globally Har-
13 monized System to businesses, including
14 small businesses, in the United States.

15 (ix) Effective compliance assistance,
16 training, and outreach to help chemical
17 manufacturers, importers, and users, par-
18 ticularly small businesses, understand and
19 comply with the Globally Harmonized Sys-
20 tem.

21 (B) REPORT.—Not later than 18 months
22 after the date of enactment of this Act, the
23 Commission shall submit to the appropriate
24 committees of Congress a report containing a
25 detailed statement of the findings and conclu-

1 sions of the Commission, together with its rec-
2 ommendations for such legislation as the Com-
3 mission considers appropriate.

4 (5) POWERS.—

5 (A) HEARINGS.—The Commission may
6 hold such hearings, sit and act at such times
7 and places, take such testimony, and receive
8 such evidence as the Commission considers ad-
9 visable to carry out this section. The Commis-
10 sion shall, to the maximum extent possible, use
11 existing data and research to carry out this sec-
12 tion.

13 (B) INFORMATION FROM FEDERAL AGEN-
14 CIES.—The Commission may secure directly
15 from any Federal department or agency such
16 information as the Commission considers nec-
17 essary to carry out this section. Upon request
18 by the Commission, the head of such depart-
19 ment or agency shall promptly furnish such in-
20 formation to the Commission.

21 (C) POSTAL SERVICES.—The Commission
22 may use the United States mails in the same
23 manner and under the same conditions as other
24 departments and agencies of the Federal Gov-
25 ernment.

1 (6) PERSONNEL MATTERS.—

2 (A) COMPENSATION; TRAVEL EXPENSES.—

3 Each member of the Commission shall serve
4 without compensation but shall be allowed trav-
5 el expenses, including per diem in lieu of sub-
6 sistence, at rates authorized for employees of
7 agencies under subchapter I of chapter 57 of
8 title 5, United States Code, while away from
9 their homes or regular places of business in the
10 performance of services for the Commission.

11 (B) STAFF AND EQUIPMENT.—The De-
12 partment of the Labor shall provide all finan-
13 cial, administrative, and staffing requirements
14 for the Commission including—

15 (i) office space;

16 (ii) furnishings; and

17 (iii) equipment.

18 (7) TERMINATION.—The Commission shall ter-
19 minate on the date that is 90 days after the date on
20 which the Commission submits the report required
21 under paragraph (3)(B).

22 (8) AUTHORIZATION OF APPROPRIATIONS.—

23 There are authorized to be appropriated to the De-
24 partment of Labor, such sums as may be necessary
25 to carry out this subsection.

1 (c) HAZARD COMMUNICATION DEMONSTRATION
2 PROJECTS.—

3 (1) IN GENERAL.—Section 20(a) of the Act (29
4 U.S.C. 670(a)) is amended by adding at the end the
5 following:

6 “(8) Subject to the availability of appropriations, the
7 Secretary of Health and Human Services, after consulta-
8 tion with the Secretary, shall award grants to one or more
9 qualified applicants in order to carry out a demonstration
10 project to development, implement, or evaluate strategies
11 or programs to improve chemical hazard communication
12 in the workplace through the use of technology, which may
13 include electronic or Internet-based hazard communication
14 systems.”.

15 (2) AUTHORIZATION OF APPROPRIATIONS.—
16 There are authorized to be appropriated such sums
17 as may be necessary to carry out the amendment
18 made by paragraph (1).

19 **SEC. 13. CRIMINAL PENALTIES.**

20 Subsection (e) of section 17 of the Act (29 U.S.C.
21 666(e)) is amended—

22 (1) by striking “fine of not more than \$10,000”
23 and inserting “fine in accordance with section 3571
24 of title 18, United States Code”;

1 (2) by striking “six months” and inserting “18
2 months”;

3 (3) by striking “fine of not more than \$20,000”
4 and inserting “fine in accordance with section 3571
5 of title 18, United States Code”; and

6 (4) by striking “1 year” and inserting “3
7 years”.